

APPENDIX.**Provisions of the Missouri Insurance Code Involved
Revised Statutes of Missouri, 1939, Volume I,
Pages 1524, 1529.**

Sec. 6052. Proceedings to wind up companies.

Whenever it shall appear to the superintendent of the insurance department, from any examination made by himself, or from the report of a person or persons appointed by him, or from the statements of the company, or from any knowledge or information in his possession, (1) that the capital stock or guarantee fund of any company heretofore or hereafter incorporated or organized under the laws of this state doing in this state any kind of an insurance business is impaired, or (2) that such company is insolvent, or (3) that such company has refused to submit its books, papers, accounts or affairs to the reasonable inspection of the superintendent or his deputy or his examiner, or (4) that such company has, by contract of reinsurance or otherwise, transferred or attempted to transfer substantially its entire property or business, or entered into any transaction, the effect of which is to merge substantially its entire property or business in the property or business of any other corporation, association, society, order, partnership or individual without first having obtained the written approval of the superintendent of insurance as provided by law, or (5) that such company is found, after an examination, to be in such condition that its further transaction of business will be hazardous to its policyholders or to its creditors or to the public, or (6) that such company has willfully violated its charter provisions or any other law of the state, or (7) that such company has an officer who has refused to be examined under oath touching its affairs, or (8) that such company is organized under Ar-

ticles 2, 3, 4, 5, 6, 7, 8 or 11 of this chapter and is found to be in such condition after examination that it could not meet the requirements for incorporation and authorization specified in the law under which it was incorporated or is doing business, or (9), that such company has ceased to transact the business of insurance for a period of one year, said superintendent may institute a suit or proceedings in the circuit court in the county or city in which such company was organized or in which it has or last had its principal or chief office or place of business or in the county of Cole, to enjoin said company from further prosecution of its business, either temporarily or perpetually, or for a judgment dissolving such corporation or for both; and after the entry of such decree or judgment, the court upon the motion of the superintendent of the insurance department may order the liquidation, settlement and winding up of the affairs of such company or the rehabilitation of such company as provided in this chapter, together with such other decrees and orders in connection therewith as the court shall deem advisable. (R. S. 1929, §5941. Reenacted, Laws 1933-34, Ex. Sess., p. 65.)

Sec. 6053. Manner of commencing suit.

Such suit shall be commenced by filing a petition in the name of the superintendent of the insurance department of this state, as plaintiff, against the company, proceeded against as defendant, and said petition shall contain a brief statement of the condition of the company proceeded against, or of the causes upon which the proceeding is based; it may also contain a prayer for temporary or permanent injunction, or for both, and shall conclude with a prayer for general relief, under which prayer the court may grant any relief or issue any injunction or writ, and make any decrees or orders, under and within the provisions of this chapter, as shall be found advisable or necessary. (R. S. 1929, §5942.)

Sec. 6054. Of the issuing, service and return of process.

Upon the filing of such petition, the clerk of the court shall forthwith, and of course, issue a summons, requiring the defendant to appear before the court, if it be in session, or before any judge thereof, if the court has either adjourned for the term or to a day beyond three days from the date of issue of said summons, and to answer the petition on the return day of said summons. Said summons shall be returnable in three days after its issue, and shall be served as provided by law for service of process upon corporations in civil cases. If an injunction is prayed for, the petition shall be presented to the circuit court, or judge thereof, and the court or judge to whom it is presented shall thereupon make an order for the issuing of an injunction, providing its term and fixing the return day of the summons, which shall not exceed three days from its date; and upon such order being made, the petition shall thereupon be filed in the clerk's office, and the writ of injunction shall issue, together with the summons as above provided. Any writ of injunction issued under this law may be served and enforced as provided by law in injunctions issued in other cases, but the superintendent of the insurance department shall not be required to give any bond as preliminary to or in the course of any proceedings to which he is a party as such superintendent, under this chapter, either for costs or for any injunction, or in case of appeal to either the supreme court or to any appellate tribunal. If the first summons issued be not served, then other summons may issue, returnable as the court or judge may direct; or the court or judge to whom said petition has been presented, or who has jurisdiction of the case, when satisfied by the affidavit of the superintendent, or of any other person, either when the petition is first presented or afterward, or on return of any summons unserved, that for any cause personal service cannot be made on said company within the three days, may order the company proceeded against to be notified of the institu-

tion of the suit, its nature, and of the return day of the summons, which in such case shall not be less than fifteen nor more than twenty-three days from the date thereof; and thereupon the clerk shall cause notice to be published in some newspaper published in the city or county in which the suit is pending - if there be a daily paper, then in such paper for ten days consecutively; or if there be no daily paper, then a weekly paper three times successively - in either case the last publication to be at least three days before the summons is returnable. Proof of such publication shall be made as provided by law for like notices in civil cases. (R. S. 1929, §5943.)

Sec. 6055. Proceedings on return of process.

Upon the return of such process duly served, or proof of such publication made, the petition shall be heard summarily before said court or a judge thereof, who may, at such hearing, or at any time thereafter, for cause shown, dissolve, modify or continue the injunction: *Provided, however,* that before the defendant shall be permitted to make any such motion, or to be heard on any motion it shall first have answered the petition. If, on the return day of the summons, the defendant shall enter its appearance to the action, and apply for further time in which to answer, the court or judge may extend the time for answering to not exceeding three days from said return day. If the defendant fails to answer on the return day, or within the time granted it as above, or fails to appear, the court or judge shall, on motion of the plaintiff, proceed to hear, determine and adjudge the cause, as herein provided, and thereafter proceed in such cause as herein provided. The pleadings and proceedings, in so far as not otherwise regulated by this chapter, shall be as in other civil causes. All pleadings shall be filed within the time herein provided, or as designated by the court or judge, and without regard to terms of the court as to the time of filing the same; nor shall the adjournment of the court for a term work a postponement of pro-

ceedings hereunder to the next term, but the same may be had in vacation as well as term time, and any orders made in vacation or by the judge shall be entered up as of a special term. (R. S. 1929, §5944.)

Sec. 6056. Hearing by the court.

The court or judge, on the return day of the summons, shall set the case for hearing on some day not exceeding five days from the return day. All pleadings shall be made up and filed at or before said day for hearing, and the judge or court shall, without the intervention of a jury, and without unnecessary delay, proceed to hear and determine said cause; or on motion of the plaintiff, but in no other case, the judge or court may, on the return day, refer the hearing of the case to a referee, with power to hear the testimony and report his conclusions on the same to the court or judge. If the case is referred, the referee shall forthwith proceed to hear the same, and shall file his report within ten days after the conclusion of the testimony. Any referee failing to at once proceed with the hearing, or to file his report within the time aforesaid, may be removed by the court or judge, in which case he shall not receive any pay or allowance whatever for his services; and the court or judge may thereupon hear the case or appoint a new referee. The fees of the referee shall be taxed and paid as costs in the case. The referee may be allowed for his services not exceeding one dollar and fifty cents for each hour actually spent by him in hearing the testimony in the case, and for taking down the testimony and writing out the same in his report, not exceeding fifteen cents per each hundred words in his report, no pay or allowances whatever being made for exhibits or their contents, or for figures or numerals; and in addition to the above, he may be allowed a fee of not exceeding one hundred dollars for his services in making his report; besides these, no other fees or allowances shall be taxed in favor of the

referee or anyone employed by him, and he shall pay his own clerk or reporter, if he employ one. Exceptions to the report of the referee may be filed by either party. If no exceptions are filed within three days after the report is presented to the court or judge, it shall be confirmed, and judgment entered thereon. In a hearing before the court or judge, or referee, certified copies of the statement made by the company proceeded against, or of reports of examinations of the company made by the superintendent, or persons appointed by him, shall be received, if offered by the superintendent, as *prima facie* evidence of the facts therein contained pertaining to the condition and affairs of the defendant. If the finding be for the defendant, it shall be lawful for the superintendent to appeal the case. If the finding be for the plaintiff, the court shall enjoin the company, either temporarily or perpetually, from the further prosecution of its business, or the court shall render judgment dissolving the company, or the court may render both such decree and judgment. Such decree or judgment shall, for all purposes of an appeal, be considered a final judgment, and the defendant may appeal from the same as in other civil cases: *Provided*, the appeal be prayed for and perfected within five days after such judgment, and that the bond shall be for such an amount as the court may fix; *and provided*, that no appeal nor *supersedeas* bond shall operate as a dissolution of an injunction or judgment, if one has been issued. (R. S. 1929, §5945. Re-enacted, Laws 1933-34, Ex. Sess., p. 65.)

Sec. 6057. Insurance superintendent to take charge - when.

If the superintendent of the insurance department shall apply, either at the time of or after the filing of the petition referred to in section 6052, R. S. of Mo. 1939, the court may, if the court deem it necessary, authorize him to temporarily take charge of the property of the defend-

ant and to receive its premiums and other income until a final decree is rendered. (R. S. 1929, §5946. Reenacted, Laws 1933-34, Ex. Sess., p. 65.)

Sec. 6058. Title of assets to vest in superintendent.

Upon the rendition of a final judgment dissolving a company, or declaring it insolvent, all the assets of such company shall vest in fee simple and absolutely in the superintendent of the insurance department of this state, and his successor or successors in office, who shall hold and dispose of the same for the use and benefit of the creditors and policyholders of such company and such other persons as may be interested in such assets. (R. S. 1929, §5947.)

Sec. 6059. Disposition of assets.

If the court directs the superintendent of the insurance department to liquidate, settle or wind up the affairs of such company, said superintendent shall take immediate possession of the assets, books and papers of such company, and unless disposition of the assets of said company is made by a reinsurance agreement as may be provided by law, he shall sell and dispose of the real estate and other property of such company, subject to the approval of the court, and may execute in his own name, as superintendent of the insurance department, all necessary and proper conveyances of the same; he may also, in his own name as such superintendent, maintain and defend all actions in the courts of this or any other state, or of the United States, relating to such company, its assets, liabilities and business. (R. S. 1929, §5948. Reenacted, Laws 1933-34, Ex. Sess., p. 65.)

Sec. 6060. Allowance of demands—commissioners appointed.

The court or judge in or before whom the case is pending, upon the application of said superintendent, shall limit and may extend the time for the presentation

of claims against such company, and notice thereof shall be given in such manner as said court or judge shall direct; and any creditor neglecting to present his claim within the time so limited shall be debarred of all right to share in the assets of such company. Said court shall appoint one or not more than three disinterested persons as commissioners to receive and decide upon the claims presented against such company, who shall give notice of the times and places of their meeting for that purpose, in such manner as said court shall prescribe, and within one month after the expiration of the time so limited, shall file with the clerk of said court a list of the claims presented to them, specifying those allowed, the amount allowed and those disallowed (R. S. 1929, §5949.)

Sec. 6061. Duties and powers of superintendent.

If the court directs or orders the superintendent of the insurance department to rehabilitate an insurance company, upon the rendition of such an order, the title and right to possession of its books, papers, records, property and assets, of whatsoever kind or nature, shall immediately vest in and pass to the superintendent of the insurance department, and said superintendent shall forthwith proceed to conduct the business of such insurance company and take all proper steps to remove the causes and conditions which have made such proceedings necessary, subject, however, to the orders of the court. Said superintendent may, subject to the approval and direction of the court, sell and dispose of any of the property of such company, may borrow money on the security of such property, may execute in his own name as superintendent of the insurance department all necessary and proper instruments and conveyances, and may also in his own name as such superintendent, maintain and defend all actions in the courts of this or any other state or states of the United States relating to such company, its assets, business and liabilities. If at any time, in the opinion

of the superintendent of the insurance department, a further continuance of the order of rehabilitation would be futile, he may apply to the court for an order to liquidate, settle or wind up the affairs of such company, or if at any time during the continuance of such order of rehabilitation the cause for any such order or like order has actually been removed, the superintendent of the insurance department or any interested person, upon due notice to such superintendent, may apply for an order terminating the proceedings and permitting such insurance company to resume title and possession of its property and the conduct of its business, but no such order shall be granted except when, after a full hearing, the court shall determine that the purpose or purposes of the proceedings have been fully accomplished. (R. S. 1929, §5950. Re-enacted, Laws 1933-34, Ex. Sess., p. 65.)

Sec. 6062. Distribution of assets.

Unless reinsurance of a dissolved company is effected and its assets conveyed to the reinsuring company as provided by law, and unless such dissolved company is being rehabilitated under other sections of this article, the superintendent of the insurance department, under the direction of said court, shall apply the sums realized from the assets of such dissolved company, first, to payment of all the expenses of closing the business and disposing of the assets of such company; second, to the payment of all lawful taxes and debts due the state and the United States and the counties and municipalities of this state; third, to the payment of the death losses and matured policy claims; fourth, to the payment of the debts and claims allowed against such company, and the unearned premiums and the surrender value of its policies, in proportion to their respective amounts; and lastly, any sums remaining in the hands of said superintendent, after the payments have been made in full as herein provided, shall be disposed of in such manner as said court shall order and direct: *Provided, however, that if the company is a life insur-*

ance company, and has deposits for policyholders, or for the security of registered policies or annuity bonds, such deposits shall be disposed of as in this chapter is specially provided in respect to the same. And said court may make all orders and decrees necessary and proper in reference to the title, possession, disposition and distribution of all assets, and the allowance and satisfaction of claims against said company, and in any other matter relating to its affairs and business. In case of a conflict of interests on any matter, or concerning the enforcement or settlement of any conflicting claims between two or more dissolved insurance companies, the settlement and winding up of whose affairs shall be under the charge of the superintendent, it shall be the duty of said superintendent, and the right of any person interested in any of the said companies, to report the fact of conflict and the question or questions involved to the court in which any of the causes is pending, and such court shall thereupon have power to appoint a trustee, to have charge and control of the interests of any of said companies as regards the settlement or enforcement of its claims in respect to the matter in controversy, or to make such other orders providing for the settlement, adjustment or enforcement of the rights of said company in said matter as to the court shall seem best adapted to the protection of the rights of all; and *provided further*, that nothing in this section shall be construed to authorize a distribution of the assets of a company already dissolved, so that creditors whose right to a ratable distribution of the assets of said company which has been fixed and determined by such dissolution shall be deprived of such right. (R. S. 1929, §5951. Re-enacted, Laws 1933, Ex. Sess., p. 65; Amended, Laws 1939, p. 457.)

Sec. 6063. Superintendent to take charge of assets.

Whenever, by this chapter, or by any other law of this state, the superintendent of the insurance department is authorized or required to take possession of the

assets of any insurance company, any person or company who shall neglect or refuse to deliver to said superintendent, on his order or demand, any books, papers, evidences of title or debt, or any property belonging to any such company in its, his or their possession, or under his, its or their control, shall be punished by a fine of not more than ten thousand dollars, or if an individual, by imprisonment in the county jail for not exceeding two years, or in the penitentiary for not exceeding three years, or by both said fine and imprisonment. (R. S. 1929, §5952.)

Sec. 6064. Reinsurance of dissolved companies.

Whenever any decree enjoining a company perpetually from further prosecution of its business or judgment of dissolution is rendered or granted under the provisions of this article, the superintendent of the insurance department may make or cause to be made, a report verified by affidavit, showing the actual condition of such company. Whenever such report shall show facts warranting, in the opinion of the superintendent of the insurance department, the reinsurance of the risks of such company, then, subject to the approval and direction of the court said superintendent shall proceed to reinsure such risks on the best terms obtainable for all persons interested. (R. S. 1929, §5953. Reenacted, Laws 1933-34, Ex. Sess., p. 65.)

Sec. 6065. Payment of expenses of proceedings.

In proceedings to enjoin, rehabilitate, dissolve, wind up or otherwise settle the affairs, and dispose of the assets of insurance companies, the superintendent of the insurance department shall receive no fees nor compensation for any services personally performed by him. He shall have power and authority, however, in such cases, and through the course of the whole case, to employ the necessary legal counsel and assistance, and clerical and actuarial force, subject to the approval of the court as to

the amount of compensation to be paid them, and the expenses of such employment together with all necessary expenses in the settlement of the business of the company, or the collection, disposition or distribution of its assets shall be taxed as costs, and paid by the Superintendent out of the assets of such company; or, in case it is reinsured, by the reinsuring company, or if the company proceeded against has no assets, then as by law in such cases provided, to the persons doing the work and rendering the service. The superintendent shall keep a full account of all receipts and disbursements, and make report of the same to the court having jurisdiction thereof at least once in twelve months, and oftener if required by the court and shall be responsible on his official bond for all assets coming into his possession. The court may, in its discretion, require of the superintendent a bond in addition to his official bond. (R. S. 1929, §5954. Reenacted, Laws 1933-34, Ex. Sess., p. 65.)

Sec. 6066. Receivers' reports.

In all cases where, under the provisions of the laws of this state, insurance companies have been heretofore or shall hereafter be dissolved and placed in the hands or charge of a receiver or receivers, or persons other than the superintendent, by decree of court or operation of this law, it shall be the duty of such receiver or receivers or persons to make full and complete itemized reports, under oath, to the superintendent of the insurance department of all receipts and disbursements, and of the condition and affairs of the company or companies under their charge; such reports shall be made once in every three months; the first report made under this law shall be brought down to the first day of October, 1879, and shall embrace an itemized statement of all receipts and disbursements, and of all property and assets then on hand, and account for all on hand from the date of the appointment of such receiver until the date of such report; it shall be filed with the said superintendent on or

before the fifteenth day of October, 1879; in case any receiver or receivers or persons shall fail to make such report within the time aforesaid, or to make any regular report as above required, the court, on motion of the superintendent, shall compel the same to be done. (R. S. 1929, §5955.)

Sec. 6067. Superintendent to have access to books, etc.

The superintendent may, at any time, have access to the books and papers of any receiver or other trustees, heretofore or hereafter appointed, for the purpose of examining his accounts, and may at any time be heard in person or by counsel on any matter affecting the administration of the affairs of such receiver or trustees. (R. S. 1929, §5956.)

Sec. 6068. Removal of receivers.

If any receiver or trustee heretofore appointed, and now charged with the winding up of the affairs of any insurance company, dies, resigns or is removed, the court shall thereupon turn the administration of its affairs over to and vest the title to all its property undisposed of in the superintendent of the insurance department, as by this chapter is provided in case of the dissolution of an insurance company; and thereupon said company's affairs and assets shall be disposed of in the same manner as in this chapter provided. In the settlement of the affairs of insurance companies already dissolved and in the hands of the courts by its receivers the court shall, as far as possible, conform to and be governed by the provisions of this law. (R. S. 1929, §5957.)

Sec. 6069. Final settlement of receivers.

It shall be the duty of every receiver heretofore appointed and now in charge of the affairs of any insolvent company, and of the superintendent of the insurance department, when charged with the winding up of the affairs of any such company, to make, at least twice a year,

to the court in which the cause is pending, and oftener, if the court shall so order, a full report, under oath, of the condition and affairs of such company; and if it shall appear to the court from such report that, after reserving an amount sufficient to pay the probable expense of winding up said company, there shall remain in the hands of such receiver or superintendent enough cash to pay at least ten per cent of the allowed claims, the court may order the same to be distributed according to the rights of the claimants. The superintendent and every such receiver shall make final distribution of the assets and final settlement of the affairs of each insolvent company, now or hereafter in his charge, and settlement of his accounts within the shortest time practicable, in no case to exceed three years from the date at which said company has been or shall be dissolved: *Provided*, that the court may, for good cause, extend the time for such final settlement, not more than two years. For the purpose of making final settlement the superintendent or receiver shall, at least three months before making the same, convert into money all assets remaining undisposed of, and distribute the same among those entitled thereto, under the order of the court. If, thirty days after such final settlement and distribution, any such receiver shall have in his hands any moneys unpaid or unclaimed, he shall pay the same over to the superintendent of the insurance department, and if such moneys are not paid, or claimed by the parties entitled thereto, within one year thereafter, the same, as well as any such fund so remaining in the hands of the superintendent after like final settlement and distribution by him of the assets of any company in his hands, shall be paid into the state treasury, and held and disposed of as provided by law for escheats. Notice of such final settlement shall be given by publication in some newspaper published in the city or county in which such proceedings are pending, for at least four weeks prior thereto. (R. S. 1929, §5958.)